



INTERIOR BOARD OF INDIAN APPEALS

Emily Jo Walters v. Acting Southern Plains Regional Director,
Bureau of Indian Affairs

36 IBIA 314 (09/26/2001)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

EMILY JO WALTERS,
Appellant

v.

ACTING SOUTHERN PLAINS REGIONAL
DIRECTOR, BUREAU OF INDIAN
AFFAIRS,
Appellee

: Order Docketing and Dismissing
: Appeal
:
:
: Docket No. IBIA 01-185-A
:
:
:
: September 26, 2001

On September 10, 2001, the Board received an unsigned copy of a notice of appeal, which indicates that the would-be Appellant is Emily Jo Walters. The copy was transmitted to the Board by the Acting Southern Plains Regional Director, Bureau of Indian Affairs (Regional Director; BIA). It is addressed to the Assistant Secretary - Indian Affairs and states that Appellant seeks review of a July 17, 2001, decision issued by the Regional Director concerning a house constructed under BIA's Housing Improvement Program.

Appellant did not file her notice of appeal with the Board. The copy received from the Regional Director on September 10, 2001, is the first copy of that document received by the Board. According to her notice of appeal, Appellant received the Regional Director's July 17, 2001, decision on July 20, 2001.

This appeal is docketed under the above case name and number, which should be cited in all future correspondence or inquiries regarding the matter. The Board finds, however, that the circumstances of this case require that the appeal be dismissed.

The Regional Director's decision stated:

This decision may be appealed to the Interior Board of Indian Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203, in accordance with the regulations in 43 CFR 4.310-4.340 * * *. Your notice of appeal to the Board must be signed by you or your attorney and must be mailed within 30 days of the date you receive this decision. * * * You must send copies of your notice of appeal to (1) the Assistant Secretary - Indian Affairs, * * * (2) each interested party known to you, and (3) this office. Your notice of appeal sent to the Board must certify that you have sent copies to these parties. * * * If the notice of appeal is not timely

filed, this decision will become final for the Department of the Interior at the expiration of the 30 day appeal period. No extension of time may be granted for the filing of the notice of appeal.

Appellant has failed to file a timely notice of appeal. The Regional Director's decision clearly informed her that her notice of appeal was to be filed with the Board and provided the Board's address. Appellant did not follow the Regional Director's instructions but, instead, filed her notice of appeal with the Assistant Secretary - Indian Affairs. The Board has consistently held that a notice of appeal is not timely when the appellant has been given the correct appeal information but files his/her notice of appeal with an official other than the Board, resulting in receipt of the notice of appeal by the Board outside the time period specified in the regulations. E.g., Charlie v. Navajo Area Director, 30 IBIA 302 (1997); Simon v. Sacramento Area Director, 29 IBIA 59 (1996).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is dismissed as untimely. 1/

//original signed

Anita Vogt
Administrative Judge

//original signed

Kathryn A. Lynn
Chief Administrative Judge

1/ In this case, Appellant's notice of appeal is not only untimely but unsigned. The Board's regulations require that a notice of appeal be signed. 43 C.F.R. § 4.332(a). Appellant was informed of this requirement in the Regional Director's decision.